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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,897	07/31/2003	John L. Waddell JR.	WADDELL 1	9607
1444 7590 07/12/2010 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			EXAMINER JOHNSON, STEPHEN	
			ART UNIT 3641	PAPER NUMBER
			MAIL DATE 07/12/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/630,897	Applicant(s) WADDELL ET AL.	
	Examiner Stephen M. Johnson	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 14 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 14 and 17-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/31/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. This Office action is in response to the RCE as filed on 7/20/2009. Claims 13-14 and 17-22 remain active in this application and an action on these claims follows. Claims 1-12 and 15-16 have been cancelled.

2. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 20 is broader than the claim from which it depends (claim 13). Claim 20 includes porous features with respect to gas as well as acoustic and shock waves.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades et al. (6,701,529) in view of Gulbierz (3,801,416) and Carlson (6,961,957).

Rhoades et al. (529) disclose a shock-attenuating assembly comprising:

- a) first and second plastic material confinement layers; 14; col. 4, lines 36-42
- b) water impermeable; col. 4, lines 36-42
- c) a plurality of pockets; containment envelopes;
see figs. 5 to 7c
- d) a shock wave attenuating material having the flow
properties of a liquid; and col. 10, lines 17-59
- e) fireproofing, heat insulating, or intumescent material. col. 10, lines 17-59

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Rhoades et al. (529) apply as recited above. However, undisclosed is a plastic material layer that is a polyamide resin or a plurality of seams surrounding each pocket to confine the pocket. Gulbierze (416) teaches a plastic material armor layer that is a polyamide resin (col. 2, lines 27-35 (NYLON 66)). Carlson (957) teaches a plurality of seams surrounding each pocket to confine the pocket (64, fig. 5). Applicant is substituting both a particular type of plastic sheet layer as well as a particular type of pocket confinement means in an analogous art setting with expected or predictable results (see *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 406 (2007)). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Gulbierze and Carlson to the Rhoades et al. shock attenuating assembly and have a shock attenuating assembly with a particular type of plastic sheet material and a particular type of pocket containment means.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades et al. (6,701,529) in view of Gulbierz (3,801,416) and Carlson (6,961,957) as applied to claims 13 and 17-22 above, and further in view of Gettle et al. (5,394,786).

Rhoades et al. (529), Gulbierz (416), and Carlson (957) apply as recited above. However, undisclosed is a filler material that is perlite. Gettle et al. (786) teach a filler material that is perlite (col. 16, lines 26-33). Applicant is substituting one filler material for another in an analogous art setting, as explicitly encouraged by the primary reference (see col. 9, lines 55-63) with expected or predictable results (see *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 406 (2007)). It would have been obvious to a person of ordinary skill in this art at the time of the invention apply the teachings of Gettle et al. to the shock attenuating

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assembly of Rhoades et al. in view of Gulbierz and Carlson and have a shock attenuating assembly with a different type of filler material.

6. Claims 13 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bainbridge et al. (6,453,477) in view of Bainbridge (7,662,468).

Bainbridge et al. (477) disclose a shock-attenuating assembly comprising:

- a) first and second plastic material confinement layers; 20, 30, 32, col. 4, line 57 to col. 5, line 3
- b) water impermeable; col. 4, line 57 to col. 5, line 3
- c) a plurality of pockets; 20, 30, 32 (see fig. 25)
- c') stitching surrounding the pockets; 62; col. 8, lines 37-43
- d) a shock wave attenuating material having the flow 22
properties of a liquid; and
- e) fireproofing, heat insulating, or intumescent material. 22; col. 10, lines 14-20

Bainbridge et al. (477) apply as recited above. However, undisclosed is a plastic material layer that is a polyamide resin. Bainbridge (468) teaches a plastic material layer that is a polyamide resin (col. 25, lines 12-37 (NYLON 66)). Applicant is substituting a particular type of plastic material, as explicitly encouraged by the secondary reference (see col. 25, lines 12-37 of Bainbridge), in an analogous art setting with expected or predictable results (see KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398, 406 (2007)). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Bainbridge to the Bainbridge et al. shock attenuating assembly and have a shock attenuating assembly with a particular type of plastic material.

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7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bainbridge et al. (6,453,477) in view of Bainbridge (7,662,468) as applied to claims 13 and 17-22 above, and further in view of Gettle et al. (5,394,786).

Bainbridge et al. (477) and Bainbridge (468) apply as recited above. However, undisclosed is a filler material that is perlite. Gettle et al. (786) teach a filler material that is perlite (col. 16, lines 26-33). Applicant is substituting one filler material for another in an analogous art setting with expected or predictable results (see KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398, 406 (2007)). It would have been obvious to a person of ordinary skill in this art at the time of the invention apply the teachings of Gettle et al. to the shock attenuating assembly of Bainbridge et al. in view of Bainbridge and have a shock attenuating assembly with a different type of filler material.

8. Applicant's arguments with respect to claims 13-14 and 17-22 have been considered but are moot in view of the new ground(s) of rejection.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.

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/Stephen M. Johnson/

Primary Examiner, Art Unit 3641

SMJ

July 8, 2010